

AMENDED IN SENATE APRIL 17, 2006

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1820

Introduced by Senator Battin

February 24, 2006

An act to amend Section 3030 of the Family Code, ~~and to add Section 294.5 to the Penal Code~~, relating to child custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1820, as amended, Battin. Custody and visitation: sex offenders.

~~(1) Existing law prohibits a court from granting custody of, or unsupervised visitation with, a child to a registered sex offender if the victim was a minor, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.~~

This bill would prohibit a court from granting custody of, or unsupervised visitation with, a child to a registered sex offender if the victim was a minor, unless the court finds clear and convincing evidence that there is no significant risk to the child and states its reasons in writing on the record. The bill would also provide that other credible evidence of child sexual abuse, neglect, or other injury of a child by a registered sex offender any person, as specified, would constitute evidence that a child is at significant risk, and would require the court to consider that evidence for purposes of granting or denying custody or visitation with that registered sex offender.

~~(2) Existing law requires persons convicted of specified sex offenses to register with local law enforcement, so long as they reside in California.~~

~~This bill would require the court in which a person has been convicted of a sex offense against a minor to inform that person that his or her conviction may result in the loss of custody of, or visitation with, his or her child or children, if any.~~

~~(3) This bill would provide that its provisions apply prospectively only.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3030 of the Family Code is amended to
2 read:

3 3030. (a) (1) ~~No person shall~~ *A person shall not* be granted
4 physical or legal custody of, or unsupervised visitation with, a
5 child if the person is required to be registered as a sex offender
6 pursuant to Section 290 of the Penal Code if the victim was a
7 minor, or if the person has been convicted under Section 273a,
8 273d, or 647.6 of the Penal Code, unless the court finds *clear and*
9 *convincing evidence* that there is no significant risk to the child
10 and states its reasons in writing or on the record.

11 (2) ~~No person shall~~ *A person shall not* be granted physical or
12 legal custody of, or unsupervised visitation with, a child if
13 anyone residing in the person's household is required, as a result
14 of a felony conviction in which the victim was a minor, to
15 register as a sex offender under Section 290 of the Penal Code,
16 unless the court finds *clear and convincing evidence that* there is
17 no significant risk to the child and states its reasons in writing or
18 on the record.

19 (3) (A) The fact that a child is permitted unsupervised contact
20 with a person who is required, as a result of a felony conviction
21 in which the victim was a minor, to be registered as a sex
22 offender under Section 290 of the Penal Code, shall be prima
23 facie evidence that the child is at significant risk. When making a
24 determination regarding significant risk to the child, the prima
25 facie evidence shall constitute a presumption affecting the burden
26 of producing evidence. However, this presumption shall not
27 apply if there are factors mitigating against its application,
28 including whether the party seeking custody or visitation is also
29 required, as the result of a felony conviction in which the victim

1 was a minor, to register as a sex offender under Section 290 of
2 the Penal Code.

3 (B) Other credible evidence of *child* sexual abuse, *neglect*, or
4 *other injury of a child*, as ~~defined~~ *described* in Section 11165.1,
5 11165.2, 11165.3, or 11165.4 of the Penal Code, by ~~a any~~ person
6 ~~described in this section~~, shall also constitute evidence that the
7 child is at significant risk, if supported by ~~an agency report, a~~
8 ~~medical examination, or testimony from the victim or a neutral~~
9 ~~expert~~, *but not limited to, a substantiated report of child abuse*
10 *or neglect* and shall be considered by the court in determining
11 custody or visitation ~~pursuant to this section~~.

12 (b) ~~No person shall~~ *A person shall not* be granted custody of,
13 or visitation with, a child if the person has been convicted under
14 Section 261 of the Penal Code and the child was conceived as a
15 result of that violation.

16 (c) ~~No person shall~~ *A person shall not* be granted custody of,
17 or unsupervised visitation with, a child if the person has been
18 convicted of murder in the first degree, as defined in Section 189
19 of the Penal Code, and the victim of the murder was the other
20 parent of the child who is the subject of the order, unless the
21 court finds that there is no risk to the child's health, safety, and
22 welfare, and states the reasons for its finding in writing or on the
23 record. In making its finding, the court may consider, among
24 other things, the following:

25 (1) The wishes of the child, if the child is of sufficient age and
26 capacity to reason so as to form an intelligent preference.

27 (2) Credible evidence that the convicted parent was a victim of
28 abuse, as defined in Section 6203, committed by the deceased
29 parent. That evidence may include, but is not limited to, written
30 reports by law enforcement agencies, child protective services or
31 other social welfare agencies, courts, medical facilities, or other
32 public agencies or private nonprofit organizations providing
33 services to victims of domestic abuse.

34 (3) Testimony of an expert witness, qualified under Section
35 1107 of the Evidence Code, that the convicted parent experiences
36 intimate partner battering.

37 Unless ~~and until~~ a custody or visitation order is issued pursuant
38 to this subdivision, ~~no person shall~~ *a person shall not* permit or
39 cause the child to visit or remain in the custody of the convicted

1 parent without the consent of the child's custodian or legal
2 guardian.

3 (d) The court may order child support that is to be paid by a
4 person subject to subdivision (a), (b), or (c) to be paid through
5 the local child support agency, as authorized by Section 4573 of
6 the Family Code and Division 17 (commencing with Section
7 17000) of this code.

8 (e) The court shall not disclose, or cause to be disclosed, the
9 custodial parent's place of residence, place of employment, or the
10 child's school, unless the court finds that the disclosure would be
11 in the best interest of the child.

12 ~~SEC. 2. Section 294.5 is added to the Penal Code, to read:~~

13 ~~294.5. Any person who is required to be registered as a sex~~
14 ~~offender under Section 290 where the victim was a minor, or~~
15 ~~convicted under Section 273a, 273d, or 647.6, shall be informed~~
16 ~~in open court by the court in which the person has been convicted~~
17 ~~that his or her conviction may result in the loss of custody of, or~~
18 ~~unsupervised visitation or visitation rights with, his or her child~~
19 ~~or children, if any, as described in Section 3030 of the Family~~
20 ~~Code.~~

21 ~~SEC. 3. The provisions of this act shall apply prospectively~~
22 ~~only.~~